IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

T.R.C.No.567 of 2001

ORDER DATED 29.5.2001 IN TA.199/2000 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOTTAYAM
(ASSESSMENT YEAR 1988-89)

.....

PETITIONER/APPELLANT:-

NATTAKOM RUBBER MILLS,
NATTAKOM,
KOTTAYAM.

BY ADV. SRI.JOHN RAMESH K.I.JOHN

RESPONDENT/RESPONDENT:-

COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 16/11/2007, ALONG WITH T.R.C.NO.569 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & K.M.Joseph,J.

T.R.C.Nos.567 of 2001 & 569 of 2001

Dated, this the 16th day of November, 2007

ORDER

H.L.Dattu,C.J.

Since common questions of law and facts are involved in these Tax Revision Cases, they are clubbed, heard and disposed of by this common order.

(2) In these Tax Revision Cases, we are concerned with assessment years 1988-89 and 1989-90.

(3) The assessee is a partnership firm, engaged in the business of purchase and sale of rubber. It is also a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 ("KGST Act" for short) and Central Sales Tax Act, 1956 ("CST Act" for short).

(4) In these Tax Revision Cases, the only question that would arise for our consideration and decision is, whether the petitioner is entitled to the benefit of the notification SRO.No.716/88 dated 19th February, 1988.

(5) While completing the assessments for the assessment years in question, the assessing authority had accepted the claim of the petitioner and had granted the benefit of the notification and thereby had exempted the assessee from payment of turnover tax. The orders so passed by the assessing authority is taken exception to by the Deputy Commissioner of Commercial Taxes, Kottayam, on the ground that the orders of assessment passed by the assessing authority is improper, irregular and also prejudicial to the interest of the Revenue. Having come to that conclusion, the Deputy Commissioner had issued a show cause notice dated 24.01.2000 to the petitioner under Section 35 of the Act. In the show cause notice so issued,

the Deputy Commissioner/revisional authority had stated, that the declaration forms produced by the assessee for claiming exemption from payment of turnover tax is defective and in those declaration forms, the purchasers of rubber from the petitioner have categorically made a statement that they have not paid the turnover tax due under the KGST Act.

(6) After receipt of the said show cause notice, the petitioner had filed his reply and had offered his explanation.

(7) The Deputy Commissioner/revisional authority, taking into consideration the reply so filed by the petitioner and being of the opinion that the dealer can claim exemption from payment of turnover tax on the sale of rubber to various dealers in the State only, when he produces declaration forms to the effect that the purchasers have paid the turnover tax and since the purchaser has not paid the turnover tax as required for the purpose of the notification SRO.No.716/88, has confirmed the show cause notice issued by him by passing the order dated 4.5.2000. Aggrieved by the order so passed by the revisional authority for the assessment years 1988-89 and 1989-90, the assessee was before the Tribunal in T.A.Nos.199 of 2000 and 200 of 2000. The Tribunal, by its order dated 29th May, 2001, has rejected the assessee's appeals. Aggrieved by the orders so passed by the Tribunal, the assessee is before us in these Tax Revision Cases.

(8) The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "i) Whether on the facts and circumstances of the case the Tribunal was justified in law in holding that the original order of assessment was not barred by limitation and accordingly the Deputy Commissioner had power to invoke section 35.
>
> ii) Whether on the facts and circumstances of the case

the Tribunal was justified in upholding the order passed u/s 35 of the Act by Deputy Commissioner cancelling the assessment for the above year on the alleged ground that it is prejudicial to revenue, by ignoring the categorical finding of the Assessing Authority in consonance with the law laid down by this Honourable Court and based on the records.

iii) Whether on the facts and circumstances of the case the Tribunal was justified in upholding the order of the Deputy Commissioner cancelling the assessment on the ground that the declaration forms produced for the turnover of Rs.46,94,102/- are defective when the assessing authority as well as the Deputy Commissioner could have identified the persons liable to turnover tax on the basis of the said declarations.

iv) Whether on the facts and circumstances of the case the Tribunal has erred in merely following the order of the Deputy Commissioner instead of coming to an independent finding based on decisions of this Honourable Court and other decisions relied on by the petitioner."

(9) Sri.John Ramesh, learned counsel appearing for the assessee would submit that the revisional authority and the Tribunal were not justified in rejecting the claim of the assessee from extending the benefit of the exemption notification, only on the ground that the declaration forms produced by the assessee are defective. The learned counsel would further contend that the assessee had furnished the proper address of the dealers who have registered themselves under the Act before the assessing authority and the authorities under the Act could have verified, whether those purchasing dealers have paid the turnover tax and in case they have paid the turnover tax, the Deputy Commissioner, Commercial Taxes/revisional authority should have dropped the proceedings initiated by him to revise the order passed by the assessing authority.

(10) Sri.Vinod Chandran, learned counsel appearing for the Revenue produces before us the declaration forms filed by the assessee before the assessing authority and then submits that in the declaration forms

so produced, there is a clear indication that the persons who have issued the declaration forms to the assessee had categorically stated that they are not liable for payment of turnover tax and in some cases they have not paid the turnover tax and, therefore, both the revisional authority as well as the Tribunal were justified in rejecting that part of the claim made by the assessee from payment of turnover tax.

(11) The question that would arise for our consideration and decision in these two Tax Revision Cases is, whether the assessee is eligible and entitled to get the benefit of the exemption notification, SRO No.716/88 dated 19th February, 1988. To answer the issue that the assessee has raised for our consideration and decision, it would be useful to extract the notification issued by the State Government in SRO.No.716/88 dated 19th Feburary, 1988. The same is as under:

> "**SRO No.716/88** -- In exercise of the powers conferred by section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963), the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption in respect of the turnover tax payable by dealers under sub-section (2A) of section 5 of the said Act, on the turnover of rubber except at the last purchase point subject to the condition that any dealer who claims exemption on such turnover tax shall produce before the assessing authority concerned a declaration in the Form annexed to the notification from the dealer who had paid the turnover tax.
>
> This Notification shall be deemed to have come into force with effect from 19th February, 1988.
>
> ANNEXURE
>
> Form of declaration to be furnished by a purchasing dealer form claiming exemption from turnover tax at other points
>
> 1. I/We.....
> (Here enter the name and full postal address of the purchaser) dealer (s) in goods taxable at the point of purchase in the State,

have purchased goods of the description given below from Shri/Messrs.....
.....(Here enter the name and full postal address of the seller (s).

2. My/Our turnover for the year is not less than Rupees Fifty lakhs and I/We have paid turnover tax on the turnover of goods mentioned below:

3. My/Our registration certificate number is .....
(Here enter R.C.No.)

4. I/We am/are registered dealer(s) on the rolls of the Sales Tax Office.....(Here enter the name of the Sales Tax Office) and I/We have filed our return for the month of .....(Here enter the month previous to which the purchase relates) along with proof of payment of turnover tax due for the goods which I/we am/are liable to pay.

Particulars of goods purchased

Sl No	No. and date of purchase bill issued by the purchaser	Description of goods	Quantity		Value of goods purchased	Turnover tax due and paid	Remarks
			No. of packages	Weight			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Place: Name, signature and Status of the persons signing the declaration.

Date:

NOTIFICATIONS

Note:--(1) The declaration shall be filed in duplicate and shall be signed by the person who is authorised to sign return in Form No.9.

(2) Any subsequent purchaser may furnish the declaration furnishing the details prescribed therein.

(Notn.G.O.(P).71/88/TD dt.13.6.88 in K.E.Ex.No.520 dt.16.6.1988)".

(12) The notification is issued by the State Government in exercise of its power under Section 10 of the KGST Act. Under the said notification, exemption is granted to a dealer in respect of the turnover tax payable by him under sub-section (2A) of Section 5 of the Act on the turnover of rubber, at all points of purchases except at the point of purchase preceding the purchase in the course of export or at the point of purchase previous to the last purchase in the State. The notification further contemplates that any dealer who claims exemption on such turnover tax shall produce before the assessing authority a declaration from the dealer who paid the turnover tax in the prescribed format annexed to the notification.

(13) Annexure to the notification gives a format of the declaration form which is supposed to be collected by the selling dealer from the purchasing dealer and produce it before the assessing authority while claiming exemption from payment of turnover tax. In too many places in the said declaration it is made clear, that, if only the purchasing dealer has paid the turnover tax, then only the selling dealer would be entitled for exemption from payment of turnover tax under sub-section (2A) of Section 5 of the Act. Further, the form of declaration would also provide that the declaration form shall contain a proof of payment of turnover tax by the purchasing dealer.

(14) In the instant case, Rubber is taxable only at the point of last purchase as per Section 5 read with the Schedule. As per the assessment notice, the petitioner was completely exempted from tax on local sales on the basis of Form 25 declaration which proves that the petitioner was not the last purchaser. The assessee had effected sale of rubber during the course of his business to various customers/purchasers. He has collected the declaration forms from those purchasing dealers and had produced the same before the

assessing authority, claiming exemption from payment of turnover tax. The assessing authority, without proper verification of the declaration forms so produced, had granted exemption from payment of turnover tax to the assessee.

(15) The Deputy Commissioner of Commercial Taxes, who is also the revisional authority, after going through the assessment records for the assessment years 1988-89 and 1989-90 and being of the opinion that some of the declaration forms produced by the assessee are defective in the sense, that the purchasing dealers have categorically stated that either they are not liable for payment of turnover tax, since the turnover does not exceed the limit prescribed under sub-section (2A) of Section 5 and in some cases that they have not paid the turnover tax since the sale is to the local dealers, had initiated suo motu revision proceedings to revise the order of assessment passed by the assessing authority granting exemption to the assessee by accepting defective declaration forms. The revisional authority is of the view, that, unless the assessee produces the declaration forms from the purchasing dealers who have paid the turnover tax, the assessee would not be entitled for exemption from payment of turnover tax.

(16) The Tribunal, while dealing with this aspect of the matter at paragraph 10, has stated as under:

> "10. The reason adopted by the Deputy Commissioner for the years 1988-89 and 89-90 is identical. During the years under dispute, Turnover tax was levied on the purchase turnover of Rubber. This liability was shifted on the strength of a prescribed Government Notification in SRO No.716/88. As per the SRO, any dealer who claims exemption on such Turnover tax shall produce before the assessing authority concerned a

> declaration in the Form annexed to the SRO from purchasing dealer who had paid the Turnover Tax. But in the appellant's case declaration filed for the years 1988-89 and 89-90 are found defective for the turnover of Rs.46,94,102-35 and Rs.26,38,375-30 respectively. Thus the Deputy Commissioner found that the assessment orders passed by the assessing authority are prejudicial to the Revenue. Therefore by invoking the power vested u/s 35 of the KGST Act, 1963, the Deputy commissioner has cancelled the order. The admissibility of the declaration filed as per SRO No.716/88 has been examined by the Deputy Commissioner on the basis of principles laid down by the Hon'ble High Court of Kerala in 91 STC 80. Therefore we also find that the reasons resorted by the Deputy Commissioner in cancelling the assessment orders under dispute are legally correct. We do not find any matter to take a negative stand against the orders of the Deputy Commissioner. Therefore we confirm it."

(17) As we have already noticed, the notification issued by the State Government grants exemption from payment of turnover tax to a dealer in rubber, provided he produces the declaration forms from the purchasing dealer and those declaration forms should show that the purchasing dealer has paid the turnover tax as required under the Act. The expressions in the notification for exemption should always be understood by the language employed therein bearing in mind the context in which the expressions occur. The exemption notification has to be construed strictly. A person invoking an exception or exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. However, once the exemption notification is found applicable to him, the full effect must be given to it. The notification granting exemption has to be interpreted in the light of the words

employed by it and not on any other basis. It is also now well settled position, that, to avail the benefit of the notification the dealer must comply with all the conditions of the notification. No dealer has a right to claim exemption from tax as a matter of right. While providing for exemption, the legislature has hedged it with certain conditions. It is not open to the court to ignore those conditions and extend the exemption.

(18) The language employed by the State Government while issuing the notification is crystal clear, in the sense, that, there is no ambiguity in the language employed by the State Government while issuing the notification. A perusal of the said notification would clearly indicate that in order to claim the benefit of exemption from payment of turnover tax under the Act, the dealer concerned should produce the appropriate declaration either from the purchasing dealers or from the subsequent purchasers that they have paid the turnover tax under the provisions of sub-section (2A) of Section 5 of the Act before the assessing authority. When the exemption notification uses the expression “a declaration form from the dealer who paid turnover tax”, it only means the benefit of the notification would only be available if turnover tax has been paid, as a matter of fact, at the appropriate or correct rate. The word 'paid' is not equivalent to 'offered' or 'tendered' but means actual payment. In the instant case, since the declaration forms produced by the assessee would clearly indicate that the purchasing dealers have not paid the turnover tax, in our opinion, the revisional authority was justified in revising the orders passed by the assessing authority for the assessment years in question.

(19) In view of the above discussion, we are of the opinion that neither the revisional authority nor the Tribunal has committed any error which would call for our interference in these Tax Revision Cases. Therefore, these

Tax Revision Cases require to be rejected and we do so. Accordingly, we answer the questions of law framed by the assessee against the assessee and in favour of the Revenue.

Consequently, C.M.P.No.7070 of 2001 in T.R.C.No.567 of 2001 and C.M.P.No.7071 of 2001 in T.R.C.No.569 of 2001 are dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.M.Joseph
Judge

vku/DK.